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June 18, 2007

The Honorable John Dingell
Chairman
House Committee on Energy and Commerce
2328 Rayburn House Office Building
Washington, DC 20515

The Honorable Rick Boucher
Chairman
House Subcommittee on Energy and Air Quality
2187 Rayburn House Office Building
Washington, DC 20515

Dear Chairmen Dingell and Boucher:

I am writing in response to your letter of May 24, 2007, requesting our views on a number of issues related to a "portfolio standards" bill requiring the Nation's retail electricity industry to obtain a target percentage of the power it delivers from designated generation sources. On behalf of the American Public Power Association (APPA), we appreciate the opportunity to offer our preliminary comments as the Committee develops a record for further proceedings. I anticipate that over the course of the Committee's hearings and further consideration of this issue that APPA will provide additional comments and supporting information.

APPA is the national service organization representing the interests of the over 2,000 state and locally owned electric utilities nationwide that collectively serve over 44 million Americans. Given their nature as community-owned utilities, governed at the local level, and directly accountable to the citizens they serve, public power systems continue to demonstrate a high degree of commitment to environmental stewardship and to addressing environmental concerns.

The public policy question of whether or not Congress should enact a federal mandatory renewable portfolio standard is extremely challenging. APPA strongly supports the development of energy from renewable sources. However, APPA does not support a federal mandate for a renewable portfolio standard (RPS). We believe this is an issue that should be handled at the state and local levels – and states and localities have been acting aggressively to develop more renewable energy. Currently 22 states have mandatory renewable portfolio standards with Illinois and Vermont having set voluntary goals for adopting renewable energy. The Oregon legislature has also recently approved an aggressive standard.

Because each state has a different mix of renewable resources, state statues vary from state to state and thus the standards they set are based on their own unique circumstances. This fact is precisely why we cannot support a federal mandate. Such a mandate would ignore these variations in resources and create winners and losers among the states, and among different renewable technologies.

In addition to state RPS programs, some public power systems have also established their own RPS requirement. For example, in 2005 the citizens of Columbia, MO. passed an RPS requirement for their utility, Columbia Water & Light, of 2 percent in 2008, 5 percent in 2012, 10 percent in 2017 and 15 percent in 2022. Columbia Water and Light serves over 38,000 customers and is the first utility in Missouri to have an RPS.

APPA's opposition to a federal renewable energy portfolio standard should not be interpreted as lack of support for taking the maximum advantage possible of our renewable resources. Evidence of public power's commitment to renewable energy resources is apparent from the fact that in 2005 public power utilities were among the highest ranked utilities of all types offering green power programs nationally, according to the Department of Energy's National Renewable Energy Laboratory. Green power refers to green pricing programs under which a utility sells power from renewable or environmentally friendly energy sources. Austin (Texas) Energy led the nation in the amount of green power sold in 2004. Sacramento Municipal Utility District (SMUD) and LADWP in California were also among the top five in total number of customer participants.

Before turning to the specific questions I would like to offer one final general observation. APPA believes that mandatory legislation to require reductions in greenhouse gases (GHG) in order to address the problem of global warming is inevitable. Therefore, a national RPS program adopted today in an effort to reduce GHG emissions would be redundant when Congress also enacts a mandatory program to achieve the same purpose. Requiring utilities to meet both the RPS requirement and mandatory reductions in GHG emissions would in effect amount to a double whammy, placing a significantly greater burden on electric utilities relative to other sectors of the economy. If we are to address the problem of global warming, and APPA believes that we should, we should do so in a way that those who contribute to the problem will be responsible for a proportionate contribution to the solution.

Following are our responses to the specific questions posed in your letter:

1. **Purpose of Portfolio Standards Proposals**

   a. **Do you believe that adopting one or more Federal "portfolio-standard requirements applied to sources of retail electricity, mandating that a given percentage of the power sold at retail come from particular sources, is an advisable Federal Policy? Why or Why not?**

As noted above, APPA opposes a mandatory federal RPS. Such a system would raise electricity prices for consumers; create inequities among states, electricity generators and electricity suppliers; and potentially threaten electric reliability. The lack of available renewable energy resources in certain regions, their intermittent nature and the problems facing construction of both renewable energy facilities and new transmission lines are significant barriers to increasing the amount of electricity produced from renewable energy resources. These issues have serious adverse ramifications for APPA's members and their customers.

Some federal RPS proposals would allow generators to pay a fee if they cannot meet the requirements. If the fee is paid to the government, this would essentially amount to a new tax on electric retail customers. If paid to generators of renewable energy, it would amount to a transfer of wealth from one area or region that does not have an abundance of renewable resources to another region that does. In either case, these utilities would still need to generate sufficient power to meet their consumers' demands.

Promoting renewable energy resources through tax based incentives and increased funding for research and development, in addition to bolstering existing renewable programs in the states, is a far better approach to help maintain our nation's diverse fuel mix and reliable electricity supply. As noted earlier, a federal RPS mandate is clearly related to the issue of climate change and has been viewed as a way to significantly reduce GHG emissions. APPA recently adopted a policy resolution on climate change legislation (see attachment). This resolution guides the association's current policy and is the basis for some of our responses to this letter and your previous letter on climate change. The resolution also addresses portfolio standards. Specifically, the resolution states that any legislation on climate change should "ensure that any generation portfolio requirements allow all low emission technologies."

We also believe the possible consequences of a national RPS on reliability and consumer costs should be considered carefully. Wind and solar are inherently intermittent resources while our economy demands that electricity be available on a 24/7 basis. To deal with this, additional generation resources must be available to meet the electric load requirements or utilities must be prepared to purchase credits from renewable generators or possibly the federal government. While greater reliance on renewable energy resources is an essential ingredient, there are additional ways to achieve the same policy goals of reducing GHG emissions including conservation, demand side management and other types of clean resources.

b. Is it appropriate for the government to impose generation-source conditions or energy savings requirement on load-serving utilities in order to serve public-policy purpose such as promotion of renewable energy production, energy efficiency, and reduction of carbon emissions? Why or Why not?

As noted above, APPA does not support a federal RPS mandate. However, if the federal government were to impose generation-source conditions or energy savings requirements, such conditions should be specific in terms of their purpose. For example, a federal RPS mandate set in place with the purpose of reducing greenhouse gas emissions and promoting energy security (as opposed to simply promoting renewable energy production) could be appropriate. The real question, however, is whether the means selected to achieve the specific public purpose is the most effective and efficient one. As we have stated above, we do not believe a federal RPS mandate is the best means of addressing GHG emissions.

c. If you favor such a policy, how would you define its specific purpose?

APPA does not favor a federal RPS mandate and therefore can not respond to this question.

d. If Congress were to adopt an economy-wide policy mandating reductions in emissions of greenhouse gases, including the electricity industry, would such a portfolio standard policy remain necessary or advisable?

No.

e. What analysis has been done of any portfolio standards requirement you endorse to demonstrate:

i. It economic costs to consumers, nationally, and in various regions, in electricity rates?

ii. Its benefits in greenhouse gas emission reductions?

iii. Its implications for electricity reliability, security, and grid management?

iv. Its implications for jobs and economic development?

v. Its implications for utility capital investment?

vi. Other relevant factors?

APPA has not done any analysis on a federal RPS mandate, and therefore we are not able to answer this question.

2. Portfolio Inclusions and Exclusions

a. What is the principle that should determine inclusion or exclusion of any energy source from an adopted portfolio standard? (i.e. excludes all fossil-fired generation, includes all generation that emits no GHG, excludes all generation below given energy-conversion efficiency, etc.)

As pointed out in APPA's principles for federal climate change legislation, any generation portfolio should include all low emission technologies. Please refer to the last bullet in the attached resolution adopted by APPA's policy committee.

b. What generation sources for retail electricity supplies (including efficiency offsets) should be included and should be excluded from any mandatory portfolio requirement that is adopted? Please provide your reasons for excluding any sources.

APPA does not have a response at this time.

c. To the extent that multiple renewable energy sources and efficiency or other sources are eligible for inclusion, should any tiers among them or separate sub-requirements be adopted?

APPA has not addressed this issue.

d. Should there be any distinction between existing and new sources of generation eligible for inclusion in the portfolio? If so, what would be the threshold date for eligibility?

APPA has argued during debate on proposed Clean Air Act amendments to reduce criteria pollutants that utilities that take early action to reduce pollutants should not be penalized under any future federal mandate. The same principle applies in this situation. Those utilities that have already invested in renewable energy – either under a state mandate or on their own – should be given credit for those actions by allowing that renewable energy to be applied to their federal obligation.

e. Would the electricity equivalent of useful thermal energy from eligible sources be credited against the requirement? Why or why not?

APPA has no position on this issue.

f. To the extent energy efficiency is included:

i. How would the required savings be measured and verified?

In general there are many public power systems taking steps to reduce greenhouse gas emissions through the use of energy efficiency methods. More specifically, APPA has participated in Power Partners™ group that works in collaboration with the Department of Energy to achieve the Administration's Climate VISION goal of reducing U.S. greenhouse gas emissions intensity—the ratio of emissions to economic output by American industry—by 18 percent over the next 10 years. At a minimum verifiable savings achieved under this program should be credited and in fact a case can be made that credit should be given for verifiable savings under the 1605(b) program.

ii. Against what base consumption period (historic or projected)?

APPA has no position on this issue at this time.

3. Percentage Requirement and Timing

a. What target percentage of total retail power deliveries should achieved by the required portfolio?

While we do not support a federal RPS requirement, if one is enacted the target should be based on what is technologically feasible and economically affordable. If tax credits or other financial incentives are provided to achieve the RPS goal such incentives must be made available to all sectors of the electric utility industry on a comparable basis.

b. What is the target year for reaching the ultimate mandate portfolio percentage?

c. Should there be a straight-line accelerating, or other form of "ramp-up" to the ultimate target percentage?

d. Should there be any "off-ramps" or other built-in automatic changes in requirements as a function of contingencies? If so, what should they be? (e.g., price or cost thresholds, contingencies for natural or climate conditions, lack of adequate transmission, etc.)

APPA has no position on questions 3a, b and c.

4. Relationship to State Portfolio Standards and Utility Regulation

a. Should an adopted Federal portfolio standard set:

i. A minimum standard, allowing states to set or maintain higher targets?

ii. A preemptive standard, prohibiting states to set higher or different targets.

iii. Merely a mandate for a standard, allowing states to set their own targets at any level.

APPA has not addressed the questions raised in 4.a.i., ii., and iii.

iv. Merely a given percentage target, allowing states to elect generation or efficiency sources eligible to meet it?

As noted, our opposition is based in large part on the belief that this issue is best addressed at the state (and in the case of public power) local level. In making these decisions, states and local governments should be free to elect the best means available to meet the target. Thus, of the four choices above, a percentage target while allowing states (and we would add locally owned and controlled public power systems) to pursue appropriate generation and energy efficiency sources to meet it is the option most consistent with APPA's position.

v. A standard applying only to states without prior portfolio requirements, grandfathering all prior standard programs?

As noted in our response to question 4(iv) APPA supports allowing states to set their own targets at any level.

b. Can and should state regulatory agencies be required to pass through the costs of complying with Federal portfolio standards requirements in retail rates?

The question correctly assumes that a federal standard will increase costs for consumers. While private companies may be able to absorb some of these costs by reducing dividends paid to their stockholders, not-for-profit public power systems have no choice but to pass increased costs on to their customers in the form of higher rates. We agree that renewable energy sources are an important part of the mix of energy sources required to reduce emissions of greenhouse gases and promote economic growth and our national security by reducing our dependence on imported sources of energy. However, these goals would be better achieved by extending the renewable production tax credits available to for profit companies and extending and reforming the Clean Renewable Energy Bond (CREB) program that was created to provide comparable financial incentives for not-for-profit public power systems and rural electric cooperatives. The extension and revision of these programs will more directly and appropriately encourage development and deployment of renewable technologies.

5. Utility Coverage

a. Should any retail sellers of electricity be exempt from the portfolio requirement? (e.g., municipal utilities, rural cooperatives, utilities selling less than a minimum volume of power, unregulated marketers in states with competitive retail markets, etc.)

The federal RPS proposals that have been voted on in the Senate in recent years (and the one defeated in the Energy and Commerce Committee in the 109th Congress) included exemptions for all or most public power systems. For the most part, exemptions were provided for smaller utilities. The vast majority of the nation's 2000 public power systems serve communities of 10,000 or less. Small utilities, like small businesses, are often disproportionately impacted by federal mandates because of their small customer base and their relative inability to leverage the market compared to much larger utilities. For this reason, small electric utilities have been exempted from various federal mandates, for example consideration of the mandatory standards established under the Public Utility Regulatory Policy Act. While we do not support a federal RPS requirement, we do believe there are sound policy reasons for exempting small systems if such a mandate is in fact imposed

b. Should any standard apply to wholesale power markets or sales?

APPA members in regions of the country served by Independent System Operators (ISOs) and Regional Transmission Organizations (RTOs) have reported substantial problems that impair their ability to provide reasonably priced and reliable long-term service to their electric consumers. Such problems have included, but are not limited to, high spot market energy prices, volatile and unpredictable energy prices, short-sighted planning for transmission projects, lack of projected investment in transmission, and skyrocketing administrative costs for ISOs and RTOs.

We have concerns that under a federal RPS of any kind, high-priced renewable energy may set the market-clearing price at times in the bid-based auctions for power supply that is a central feature of these markets. High-priced natural gas has already been shown to set the market clearing price frequently in these regions, and with a mandate on renewables, it is quite likely that these types of resources will do so as well. When these resources set the price, other types of much lower-cost base-load power that have also been bid into the market during the same hour receive the price for the renewable energy, meaning that a substantial mark-up occurs for that base-load power. APPA's overall concerns about RTOs would be exacerbated under this scenario. In terms of whether or not this situation would be alleviated or exacerbated if the RPS applied to the markets themselves, we have not done that type of analysis at this point.

c. Should there be any basis for discretionary exemptions of certain states or utilities?

APPA has no response to this question.

6. Administration and Enforcement

a. Should a Federal Government entity enforce the requirement and decide on any exemptions?

Obviously, if a mandatory federal RPS requirement is adopted it would have to be enforced by some agency of the federal government.

i. If so, which one? (e.g., the Environmental Protection Agency? The Department of Energy? The Federal Energy Regulatory Commission? A newly created office or entity?

APPA has no response to this question at this time.

ii. If not, should enforcement be delegated to the States or to regional transmission or electric-system-operation entities

APPA has no position on this issue.

b. How should Federal and State enforcement be coordinated in states with their own portfolio requirements?

APPA has no response to this question at this time.

c. What penalties should apply for failure of utilities to meet the percentage mandate?

As APPA does not support a federal RPS mandate, we do not have a position on this issue.

7. Credits and Trading

a. Should tradable credits for qualifying generation be utilized as the mechanism for establishing compliance?

If a federally-mandated "portfolio standard" is adopted, a mechanism will be necessary to ensure that utilities in areas without sufficient qualifying "portfolio standard" resources can comply with requirements. Tradable credits would be a workable mechanism and purchase of credits directly from the federal government could be another option.

b. Should credit trading be permitted or required on a national basis in order to achieve least-cost compliance with the portfolio standards?

While we have not addressed this issue, if a federally-mandated "portfolio standard" is adopted, credit trading on a national basis would likely be the most efficient approach.

c. Should there be a cap on the credit values to limit costs?

While we have not addressed this issue, we believe it would be prudent for Congress to consider a cap on credit values by allowing DOE to sell credits at a reasonable cost.

d. As between a utility purchaser and a qualifying power generator, to whom should the portfolio standard credits be initially allocated?

APPA has not addressed this issue. That said, we find the reference to an allocation of credits somewhat confusing. We envision such credits as an attribute of energy produced from qualifying energy sources. As such, they are not allocated by the government but are instead created as renewable energy is produced. They can then be separated from the energy produced and sold to load serving entities that need credits in order to comply with the RPS requirement. In that case, the credits belong to the qualifying power generator. However, if the question envisions an initial allocation of credits created by the legislation in order to mitigate the initial cost of the RPS requirement on consumers, then clearly they should be allocated to the load serving entities on whom the RPS requirement falls.

e. What relationship, if any, should portfolio standard credits have to other State and Federal credit trading programs for SO2, greenhouse gases, or biofuels?

There should be no relationship with federal credit (allowance) trading programs such as Clean Air Act SO2 acid rain allowances, Clean Air Interstate Rule (CAIR) SO2 and NOx allowances, and the Clean Air Mercury Rule (CAMR) mercury allowances. These Clean Air Act programs were designed to achieve reductions in regulated emissions to specific national or regional levels. A federal "portfolio standard" would not have a similar goal. However, we would suggest that the legislation ensure that states cannot restrict the trading of credits if a federally-mandated portfolio standard is adopted.

f. What requirements, if any, would there be concerning the length of contracts for qualifying generation and ownership of credits rights?

Here again, APPA has not addressed this issue. However, it seems to us that the ownership of credit rights is an issue between the buyer and seller of such rights. A somewhat related issue is credits for jointly owned qualifying projects. Congress should ensure that the rights are protected for joint owners of units to receive credits for their share of qualifying "portfolio standard" energy sources and for qualifying energy conservation measures installed at generation sources. For example, Section 408(i) of the Clean Air Act provides protective measures for affected acid rain electric generating units that have multiple owners. Many APPA members engage in joint ownership situations in generating units with others in the electric utility industry.

Sincerely,

Alan H. Richardson

Alan H. Richardson
President & CEO

Attachment

cc: Members, House Committee on Energy and Commerce

ATTACHMENT

Principles for Federal Climate Change Legislation

Emissions of greenhouse gases, primarily from the combustion of fossil fuels, and the linkage of those emissions to global climate change, is the most significant environmental policy issue confronting the nation. Discussion, debate, and concern within the scientific community as well as with the general public regarding the effects of these emissions on the physical environment and the economic consequences of programs to reduce these emissions is prompting action by federal, state and local policymakers.

The issue of climate change is one of the highest priorities of the American Public Power Association (APPA). In June of 2006, the Board established a CEO-level Climate Change Task Force to help the Association evaluate and ultimately develop policy recommendations on legislative proposals to reduce greenhouse gas (GHG) emissions and to provide practical advice to APPA members on programs and activities they can pursue locally to reduce GHG emissions in their own communities.

NOW, THEREFORE, BE IT RESOLVED: That the American Public Power Association urges Congress to consider carefully all solutions for addressing climate change and to incorporate the following principles in any new federal policy designed to address emissions of greenhouse gases. Specifically, federal legislation must:

- Be economy wide and apply to all industry sectors;

- Consider the financial impact on and the ability of consumers to afford any proposed greenhouse gas emission reduction program;

- Protect the ability of U.S. industries to compete in world markets and carefully consider the international competitive impact on U.S. jobs;

- Allow credit for early actions taken to reduce greenhouse gas emissions;

- Maintain reliability, protect national security and avoid over-reliance on any single fuel by recognizing the importance to the nation of preserving a diverse mix of electricity generation fuels, including coal, nuclear, natural gas, and all renewable energy sources including hydro;

- Place an enhanced and immediate economy-wide focus on energy efficiency for all energy uses;

- Ensure that tax-based or other incentives for the development and deployment of renewable and clean energy facilities and programs are provided on a comparable basis to all electric industry sectors including public power;

- Recognize and address regional differences that can impact the fairness and effectiveness of any program designed to address greenhouse gas emissions.

- Include additional and expanded federal support for research, development and deployment of cost-effective technologies to reduce, capture, transform, transport or sequester greenhouse gases from emission sources throughout the national economy.

- Ensure that any generation portfolio requirements allow all low emission technologies.

Approved by the Legislative and Resolutions Committee of the American Public Power Association on March 13, 2007. The resolutions serve as APPA policy until the entire membership has an opportunity to consider the issues at APPA's National Conference in June 2007.